IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:23 .11.2006

THE HONOURABLE MR.JUSTICE P.JYOTHIMANI

W.P.Nos.26219 and 26220 of 2006

and W.P.M.P.Nos.1 & 2 of 2006

Dr.K.Sivasubramaniyam ... Petitioner in W.P.No.26219/06

Dr.Ananta Kumar Giri ... Petitioner in W.P.No.26220/06

Vs.

1. Madras Institute of Development Studies
   Rp.by its Chairperson
   79, Second Main Road, Gandhinagar,
   Adayar, Chennai. ... Respondent in W.P.Nos.26219/06
   ... Respondent in W.P.Nos.26220/06
2. The Director,
   Madras Institute of Development Studies,
   79, Second Main Road, Gandhinagar,
   Adayar, Chennai. ... Respondent in W.P.Nos.26219/06
   ... Respondent in W.P.Nos.26220/06
3. Dr.S.Anandhi
   Assistant Professor,
   Madras Institute of Development Studies,
   79, Second Main Road, Gandhinagar,
   Adayar, Chennai. ... Respondent in W.P.Nos.26219/06
4. Dr.Brinda Viswanathan
   Associate Professor,
   ISEC, Nagarabhavi,
   Bangalore 560 072... Respondent in W.P.Nos.26219/06
5. Dr.L.Venkatachalam,
   Associate Professor in Economics
   ISEC, Nagarabhavi,
   Bangalore 560 072. ... Respondent in W.P.Nos.26219/06
6. Dr.Ajit Menon
   Centre for Inter Disciplinary Studies
   in Environment and Development,
   ISEC, Nagarabhavi,
   Bangalore 560 072. ... Respondent in W.P.Nos.26219/06

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7. Dr.Kripa Ananthpur
Assistant Professor,
Madras Institute of Development Studies,
79, Second Main Road, Gandhinagar,
Adayar, Chennai. ... Respondent in W.P.Nos.26219/06

8. Dr.A.R. Venkatachalapathy,
Assistant Professor
Madras Institute of Development Studies
79, Second Main Road, Gandhi Nagar,
Adayar, Chennai. ... Respondent in W.P.Nos.26220/06

PRAYER IN W.P.No.26219 of 2006: This Writ petition is filed under Article 226 of the Constitution of India to issue a writ of Certiorari, calling for the records in the order bearing No.Ref.Gen/2006 dated 14 August 2006 issued by respondent 2, so far as it relates to the selection of respondent 3 to 7 for the post of Associate Professor in respondent 1 - Institute.

PRAYER IN W.P.No.26220 of 2006: This Writ petition is filed under Article 226 of the Constitution of India to issue a writ of Certiorari, calling for the records in the order bearing No.Ref.Gen/2006 dated 14 August 2006 issued by respondent 2, so far as it relates to the selection of respondent 3 as Professor in respondent 1-Institute.

For Petitioners : Mr.M.Radhakrishnan
For Respondents : Mr.Rajah

O R D E R

The main point arising for consideration in these Writ Petitions are as to whether the writ petitions are maintainable against the Madras Institute of Development Studies. Before going into the legal aspects, it is necessary to refer to the factual aspects of the respondent organization.

2. The Madras Institute of Development Studies was founded as a trust under a deed of trust executed on 18th September 1970, by the founder trustees Elizabeth Adiseshiah and Malcolm Adiseshiah with the objects of

a) Organizing, promoting and executing programme of Social Science research with discipline based or Multi and inter disciplinary approaches, for furthering National and state development
b) For developing instructional materials in the Social Sciences for use by the Universities and other institutions of higher

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education

c) For providing a network along with the University system and other Research Institutions for the promotion of Social Science Research at the Micro and Macro levels and in particular, to provide a meeting ground for social scientists of the Southern Universities.

d) For training and guiding scholars in M.Phil., and Ph.D., courses in Social Sciences.
e) For organizing and co-operating with other institutions in the organization of Seminars, Workshops, Conferences and Meetings dealing with the Social Science matters.
f) For developing a library and documentation center in Social Sciences.
g) For publishing the results of Research, Reference works, Text Books, Instructional Materials and Periodicals in Social Science, and
h) For undertaking all other activities to promote Social Science Research.

3. The deed of trust also contained the formation of board of trustees. According to the trust deed, the governing counsel consist of 18 persons out of whom apart from the Chairperson, two representatives of the Government of Tamil Nadu, one shall be the Secretary, Department of Finance and the other Secretary of the Department with which the institute is directly related and two nominees of the Indian Counsel of Social Science Research for a period of 3 years, apart from one nominee from a University selected in rotation from each of the Southern States namely, Andrapradesh, Karnataka, Kerala and Tamil Nadu. Therefore, in the governing counsel out of 18 members, the said 5 persons are either from Government or from University or from the Indian Counsel of Social Science Research which is the Government of India organization. The Executive counsel of the trust also shall include one representative from the Government of Tamil Nadu nominee one representative from the Indian Counsel of Social Science nominee and one nominee of the University.

4. It is also not in dispute that the said trust deed has undergone few amendments with the approval of the Government of Tamil Nadu as well as the Indian Counsel of Social Science Research so as to enable the nominees from the said organizations and it is also not in dispute that the Government nominees, nominees of Indian Counsel of Social Science Research and the nominee of the Univerity are forming part of the trust.

5. The first respondent institute was reconstituted as a National Institution in the year 1977 by a joint sponsorship of the Indian Council of Social Science Research and the Government of

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Tamil Nadu, the approved 50% of the expenditure was met by the Indian Counsel of Social Science Research and the other 50% by the State Government subject to certain ceiling. That apart it is the case of the first respondent, that it has got its own sources of funding. The function of the first respondent is to act as a research body, however, recognized by the Government of Tamil Nadu, as well as the Indian Counsel of Social Science Research, New Delhi, for whom the work allotted by them is done by the first respondent organization being the expert body in the subject namely Social Science.

6. According to the first respondent, it is not affiliated to the University Grand Commission and it is not controlled either by the Government of Tamil Nadu or the Indian Counsel of Social Science Research, New Delhi, even though, the funding has been done by the said organizations, since the work done by the first respondent institute is of utility value on the national interest on the education side.

7. With the above background of first respondent, the writ petitions are filed challenging the decision of the Executive Counsel of the second respondent dated 14.08.2006, approving the appointment of the third respondent in W.P.No.26220 of 2006, Dr.A.R.Venkatachalapathy as Professor and approving the appointment of respondents 3 to 6 in W.P.No.26219 of 2006 namely Dr.S.Anandhi, Dr.Brinda Viswanathan and Dr.L.Venkatachalam as the Associate Professors. That decision was taken based on the recommendations of the selection committee. It is also seen in the type set papers filed on behalf of the first and second respondents that the selection committee for the post of Professor which has interviewed 4 candidates and recommended the name of the third respondent in W.P.No.26220 of 2006 consisted of the following members namely-

1. Prof.Sathish K.Jain, Professor of Economics, Center for Economic Studies and Planning, School of Jawaharlal Nehru University, New Delhi.
2. Prof.Saraswathi Raju, Center for the Study of Regional Development, Jawaharlal Nehru University, New Delhi.
3. Prof.Alakh N.Sharma, Director, Institute for Human Development, New Delhi.
4. Dr.S.L.Shetty, Director, Economical and Political Weekly Research Foundation, Mumbai.
5. Prof.N.Jayaram, Tata Institute of Social Sciences, Mumbai.
6. Prof.Neeraj Gopal Jayal, Professor of Political Science, Center for Law and Local Governance, Jawarhalal Nehru University, New Delhi.
7. Prof.Padmini Swaminathan, Director & Member Secretary of the trust.

Likewise, in respect of the selection and recommendations of

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candidates for the post of Associate Professor in which, the respondents 3 to 5 were recommended, apart from respondents 6 and 7 also the members were as follows:

1.Prof. M.Ananthakrishnan, Chairperson
2.Prof.Sathis K.Jain,
3.Prof.Saraswathi Raju,
4.Prof.Alakh N.Sharma,
5.Prof.S.L.Shetty
6.Prof.N.Jayaraman
7.Prof.Neeraj Gopal Joyal
8.Prof.Padmini Swaminathan, Director & Member Secretary

8. Thereafter, the recommendations of the selection committee was placed before the Executive Counsel of the first respondent in its Extraordinary meeting held on 12.08.2006 and ultimately, the impugned resolution came to be passed by the Executive Counsel and the impugned orders was passed on 14.08.2006, recommending the said respondents for the respective posts. It is this decision of the first and second respondents which is challenged by the petitioners, who are admittedly working in the first respondent institute as Assistant Professor (Research Associate). Pursuant to an advertisement issued by the first respondent, calling for the post of Associate Professors in the first respondent institute in November 2005, he has applied. According to the petitioner, the selection of the respondents stated above are challenged on various grounds including that as per the Faculty Recruitment Rules, 2001 governing the first respondent institute, the qualifications prescribed for Associate Professor is "Good academic record in a Doctorial degree or equivalent published work with 5 years of experience of teaching and/or research".

9. However, in the advertisement issued by the first respondent, the qualifications for Associate Professor was mentioned as
"Essential: good academic record with a doctoral degree in Social Sciences, with at least 5 (five) published papers in reputed national/international journals/edited volumes or equivalent thereof - and experience of research / teaching at University/ National level research institutions."

10. Therefore, according to him there is a contradiction between the regulations and advertisement, with the results the selection made based on the regulations should be set aside.

11. As per the rules, the short list of candidates for the post of Associate Professor was not done. The constitution of the selection committee was not proper, since according to the petitioner, three noted Social Scientists from the Universities do

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not find place. No guideline has been framed either by the selection committee or by the regulation for assessing the merits of the candidates and the selection committee has not applied its proper yardstick. It is also the case of the petitioner that the selection process is malafide.

12. On the other hand, the first and second respondents have filed a counter affidavit stating the actual position of the first and second respondents being a private trust. The main contention on behalf of the first and second respondents are that these Writ Petitions against the first and second respondents being the private trust is not maintainable, since the first and second respondents will not come under the preview of "State" under Article 12 of the Constitution of India. There is no control by the Government or by the Indian Counsel of Social Science Research, New Delhi, except, granting funds which is used for the projects, which are assigned to the first and second respondents institute and the institute itself has its own corpus. The institute is also not enjoying any monopoly in the field of development studies and there is no deep or the pervasive "State" control. According to the first and second respondents, they are only the private trust not performing any public functions and no public elements are involved in their functions.

13. It is also the case of the first and second respondents that even though, the Government of Tamil Nadu as also the Indian Counsel of Social Science Research on making grants, there is no binding obligation on their part and that apart, the first and second respondents are not created by Government or a Government owned Corporation.

14. As far as the allegations regarding the discrepancy between the service regulations and the advertisement, according to the first and second respondents, there is actually no contradiction. Likewise, the allegation regarding the short-listing of all the candidates by the Chairman and the Director of the said Institute, the same has been factually denied. Of course, in respect of allegation about the constitution of the selection committee the learned counsel for the petitioner has also fairly submitted that inasmuch as the impugned order itself shows the names of members of the selection committee and whose designation has been furnished by the first and second respondents, the same is not seriously disputed.

15. As far as the next contention of guidelines with the selection committee, it is the case of the first and second respondents that since the members of the selection committee are eminent personalities, who are from various fields belonging to reputed Universities, it is purely an academic manner and they have taken decision, which is binding upon the first and second

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respondents.

16. In any event, according to the first and second respondents, the petitioner having taken part in the selection process, having been not selected, has approached this Court which is not maintainable. Mr.M.Radhakrishnan learned counsel appearing for the petitioners, while dealing with the question of maintainability, would submit that by appointment of two persons from the Government and by nominating of two persons from the Indian Counsel of Social Science Research, New Delhi, apart from one nominee from University, the Governing counsel actually gets the control from the State. That apart, according to the learned counsel, when the state funds are flowing into the activities of the first and second respondents, the first and second respondents must be stated to have some public law elements and therefore, even assuming that they are the private individuals, taking into consideration, the functional aspect, they must be taken as a "State", at least for limited purpose of administering the objects of the trust.

17. According to the learned counsel for the petitioner, the functions of the first and second respondents must be treated as akin to the function in furtherance of national interest on Social Sciences, since the recommendation of the first and second respondent are taken by the Governmental organization.

18. The learned counsel would rely upon the 7 judges bench decision of the Hon'ble Supreme Court rendered in Pradeep Kumar Biswas Vs. Indian Institute of Chemical Technology and others reported in 2002(5) SCC 111, to support his contention that to decide as to whether a particular body is a State, it must be based on the function which can be to be the fundamentals of the governance of the country. It is his contention that since the work of the first and second respondents involves the developmental activity of the country, either in direct or indirect manner, the function should be attached to the fundamental development of the country.

19. On the other hand, the 7 judges bench the Hon'ble Apex Court was to consider the status of Indian Institute of Chemical Technology, which was registered as a society under the Societies Act, as per the decision of the Government of India deciding to set up a council of Industrial Research on a permanent footing with an object of coordinating and exercising administrative control over the working of the two research bodies already set up by the Department of Commerce, namely, the Board of Scientific and Industrial Research and Industrial Research Utilization Committee. It is also stated that the management and control of the said Indian Institute of Chemical Technology was with a governing body with His Excellency Governor General, since it was pre-independent.

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The representatives from the Commerce Department appointed by the Government of India, representatives of the Finance Department of Government of India appointed by the Government of India, two members of the Board of Scientific and Industrial Research elected by the said board, two members of the Industrial Research utilization committee, the Director of Scientific and Industrial Research, apart from one nominated by the Government of India were members. By a subsequent regulation framed in 1999, the governing committee council consisted of the Prime Minister of India, His Excellency The President, apart from the Minister in charge of ministry or department dealing with the council of Scientific and Industrial Research who is the Vice President, Minister in charge of finance and Industries as ex-officio, apart from the members of the governing body, Chairman Advisory Board and any other persons appointed by the President CSIR.

20. It was based on that background the Hon'ble Apex Court has held as stated above that it is based on the function which is of national importance, the term "State" has to be defined. The Hon'ble Supreme Court in fact in the said case has held the test to be formulated to decide about the term "State".

21. According to the learned counsel for the petitioner, as per the said judgement of the Hon'ble Apex Court which contemplates the financial, functional and administrative domination by the Government, the financial aspect of the first and second respondents society is under the control of the Government as well as the institute . According to him, in respect of functional control also out of 18 members of the council, 5 are from Governmental authority and inasmuch as the function performed by the first and second respondents is in respect of national importance, by applying the test laid down it should be treated as 'State'.

22. To support his contention, he would also rely upon the subsequent judgement of the Hon'ble Apex Court, wherein, the 5 judges bench of the Supreme Court has again discussed about the term "State", while considering the Zee Television Ltd., one of the largest vertically integrated media entertainment group in India, apart from the other similar organizations recognized in Tamil Nadu and foreign countries. When the board of control for Cricket in India has advertised, inviting tenders for grant of exclusive television rights for a period of 4 years and the board has decided to accept the offer of one such participants and subsequently, the entire tender process was cancelled on the basis that there was no concluded contract, the Hon'ble Supreme Court has dismissed the Writ Petitions, as not maintainable by reiterating the guidelines laid by the 7 judges bench of the Hon'ble Supreme Court rendered in 2002(5) SCC 111.

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23. It was based on the said guidelines, the Hon'ble Apex Court has rendered the judgement in the said case holding that there is no state action. Therefore, ultimately as correctly pointed out by the learned counsel for the petitioner, the decision has to be arrived at on the basis of facts and circumstance of each and every case and to decide in the light of the cumulative facts as to whether there was a financial, functional and administrative domination controlled by the Government and such control must be pervasive if not deep in its nature. By applying the said rule, ultimately laid down by the Hon'ble Apex Court to the facts and circumstances of the present case, I have no hesitation to come to the conclusion that the first and second respondents can never be termed as "State" for the purpose of invocation of the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. There are more than one reasons for the said conclusion. On facts, it is clear that even though the grants are given by the State Government as well as the Indian Counsel of Social Science Research, the facts remains that the first respondent has its own funding avenue. Even assuming that financially the government agencies are having control, by applying the other consecutive tests of functional and administrative control, there can be no hesitation to come to the conclusion that as far as the function of the first and second respondents are concerned, it is only a research activity, not conducted on behalf of the Government or governmental agencies but independently as experts in the field like any other private organization.

24. As far as the administration of the first and second respondents' trust is concerned, it being a sophisticated academic body, merely because two members of the State Government and two from the said Institution and one from University are nominated, it does not mean that there is an administrative control, for, it is only for the purpose of overseeing as to whether the funds that are allotted by the said agencies are properly utilized or not the said members are inducted and not to perform the objects of the Trust. Therefore, the said members have nothing to do with the objects of the trust as such. Therefore, there is absolutely no question of the applicability of the guidelines issued by the Hon'ble Supreme Court on the facts and circumstances of the case and therefore, the writ as such is not maintainable and deserves to be dismissed on this account.

25. Since I have decided that the writ is not maintainable and the first and second respondents is only a private organization and can never be treated as "State" or performing any public function or any public law element is involved in the function of the first and second respondents, I need not go into the further aspect about the legality or otherwise of the impugned resolution questioned in this writ proceedings, even though Mr.Raja learned counsel appearing for the first and second respondent would

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vehemently oppose even on the merits of the case stating that the petitioner having worked in the same first and second respondents for so many years and having participated in the selection process cannot be expected to question the validity of selection since he was not selected. The reliance placed by him on the judgement of the Hon'ble Supreme Court rendered in Suneeta Aggarwal Vs. State of Haryana and others reported in 2000(2) SCC 615 is relevant to be considered. In that case after narrating the facts that in a similar circumstance in respect of the selection to the post of Lecturer in a Government aided educational Institution, when an individual person has participated without any protest, the Hon'ble Apex Court has held that he is estopped from taking a different stand about either the validity of the selection committee or decision taken by the selection committee. The relevant portion of the judgement of the Hon'ble Supreme Court reads as follows:

> "4. We have heard learned counsel for the parties. Narration of the aforestated facts would show that the appellant had disentitled herself to seek relief in the writ petition filed by her before the High Court. The appellant did not challenge the order of the Vice-Chancellor declining to accord approval to her selection and, on the contrary, she applied afresh for the said post in response to re-advertisement of the post without any kind of protest. Not only did she apply for the post, but she also appeared before the Selection Committee constituted consequent upon readvertisement of the post and that too without any kind of protest, and on the same day she filed a writ petition against the order of the Vice-Chancellor declining to accord his approval and obtained an ad interim order. In the writ petition she also did not disclose that she had applied for the post consequent upon the second advertisement. The appellant having appeared before the Selection Committee without any protest and having taken a chance, we are of the view that the appellant is estopped by her conduct from challenging the earlier order of the Vice-Chancellor. The High Court was justified in refusing to accord any discretionary relief in favour of the appellant. The writ petition was rightly dismissed."

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26. Therefore, even on the other issue relating to the principle of estoppel, it is not open to the petitioner to challenge the validity or the selection process. There is one more aspect in this case, that admittedly the first and second respondents are doing the high and sophisticated academic activities by way of promoting research etc., and the selection committee undoubtedly consist of eminent persons from various fields, especially, from renowned Universities and in such

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circumstances, it is for the academic authorities to take decision about the suitability of a person to be appointed as Associate Professor or Professor in a research institute which cannot be interfered by this Court exercising powers under Article 226 of the Constitution of India, since the jurisdiction of this Court under Article 226 of the Constitution of India in respect of academic matters is very limited.

27. In view of the same and mainly on the ground of maintainability of the writ petition, the writ petition fails and the same is dismissed with the cost of Rs.10000/- to be paid by the petitioners to the first respondent. Consequently, connected W.P.M.P.is closed.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

To

1. The Chaiperson,
Madras Institute of Development Studies
NO.79, Second Main Road,
Gandhi Nagar Adyar,
Madras- 600 020.

2. The Director,
Madras Institute of Development Studies
NO.79, Second Main Road,
Gandhi Nagar, Adyar,
Madras- 600 020.

2 ccs to Mr.Rajah Advocate, sr. 57178, 57179
1 cc to Mr.M. Radhakrishann, Advocate, sr. 57214

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